

**Supplemental Specification  
2005 Standard Specification Book**

**SECTION 00820**

**LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC**

**Delete Section 00820 in its entirety and replace with the following:**

**PART 1      GENERAL**

**1.1      RELATED SECTIONS**

- A.      Section 00555: Prosecution and Progress
- B.      Section 00570: Definitions
- C.      Section 01355: Environmental Protection
- D.      Section 01554: Traffic Control

**1.2      REFERENCES**

- A.      Code of Federal Regulations (CFR)
- B.      Manual of Uniform Traffic Control Devices (MUTCD)
- C.      OSHA Safety and Health Regulations for Construction
- D.      UDOT Construction Safety and Health Manual
- E.      UDOT Owner Controlled Insurance Program (OCIP)

**1.3      OBSERVING LAWS, RULES, AND REGULATIONS**

- A.      Observe and comply with all of the following that affect the conduct of work on the project, have jurisdiction or authority over the work, or that affect individuals engaged or employed on the project:
  - 1.      Federal and State Laws
  - 2.      Local laws, ordinances, and health officials
  - 3.      Regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority

4. UDOT Construction Safety and Health Manual
- B. Protect and indemnify the Department and its representatives against claim or liability arising out of or resulting from violations of any of the above listed items, whether violated by employees, agents, or contractors of the following:
    1. The Contractor
    2. Subcontractor at any tier
    3. Suppliers of materials or services
    4. Any others engaged by the Contractor
  - C. Do not require employees of the Contractor or subcontractor to work in surroundings, or under conditions that are unsanitary, hazardous, or dangerous to health or safety.
    1. Immediately correct any conditions that do not comply with the foregoing provisions.
      - a. The Engineer issues a stop work order when either site conditions and/or work practices present an imminent danger (i.e. may result in serious injury, death, or extensive property damage) until those conditions or practices are corrected.
      - b. A stop work order does not provide relief from completing the project within the specified contract completion time.
  - D. Allow access to all areas of work on the project and admit any inspector of the OSHA or other legally responsible agency involved in safety and health administration without delay and without presentation of an inspection warrant to all areas of the work and project site upon presentation of proper credentials.
  - E. Comply with Federal, State and local laws, rules, and regulations that enumerate unlawful employment practices including discrimination because of race, religion, color, sex, age, disability, or national origin, and that define actions required for Affirmative Action and Minority/Disadvantaged Business programs.
  - F. Immediately notify the Engineer in writing upon discovering any discrepancy or inconsistency between the contract and any law, ordinance, regulation, or order, except as noted in this Section, article 1.8.

#### **1.4 USING EXPLOSIVES**

- A. Comply with all laws and ordinances and specifically Title 29 CFR Part 1926 - Safety and Health Regulations for Construction (OSHA), Title 30 CFR, and the UDOT Construction Safety and Health Manual, whichever is the most restrictive, in the use, handling, loading, transportation, and storage of explosives and blasting agents.
- B. Do not endanger life, property, or work with the use of explosives.

- C. Accept liability for property damage, injury, or death resulting from the use of explosives.
- D. Notify property owners and public utility companies in the vicinity of the proposed detonation before using any explosives.

## **1.5 PROTECTING FORESTS**

- A. Perform work within or adjacent to State or National Forest under regulations of the State Fire Marshal, Conservation Commission, Forestry Department, or other authority having jurisdiction governing the protection of forests.
- B. Keep the project site orderly and clean.
- C. Obtain all required permits.
- D. Prevent and assist with the suppression of forest fires.
- E. Cooperate with responsible forestry officials.

## **1.6 PERMITS, LICENSES, AND TAXES**

- A. Acquire all permits and licenses; pay applicable charges, fees, and taxes; and give all notices necessary to perform the work.
- B. Include these costs in the appropriate unit prices bid for the contract items.

## **1.7 PATENTED DEVICES, MATERIALS, AND PROCESSES**

- A. Provide proof of legal agreement with the patentee or owner, if necessary, for use of a design, device, material, or process covered by letters, patents, or copyrights
- B. Indemnify and hold harmless the Department and any affected third party or political subdivision from claims of infringement of patents, copyrights, or trademarks.
- C. Indemnify the Department for costs, expenses, and damages, which it may be obligated to pay as a result of an infringement during the conduct of the work or after the project is completed.

## **1.8 FEDERAL AID PARTICIPATION**

- A. Federal requirements of a federally assisted contract supersede conflicting provisions of laws, rules, or regulations.
- B. The Department supervises all work but appropriate Federal officials inspect and approve the work when there is Federal participation in the contract. The U.S. Government, however, is not a party to the contract and will not interfere with the rights of contract parties.

## **1.9 PUBLIC CONVENIENCE AND SAFETY**

- A. Perform work with minimal obstruction to traffic.
- B. Follow the safety provisions of all applicable laws, rules, codes, and regulations to ensure the safety and convenience of the public and property.
- C. Provide, erect, and maintain all traffic control devices such as barriers, barricades, and warning signs in accordance with MUTCD and Section 01554 requirements to protect the work and the public safety.
  - 1. Use barriers and barricades to delineate highway sections closed to traffic.
  - 2. Illuminate obstructions during darkness and provide warning signs to control and direct traffic.
- D. Erect warning signs for work that may interfere with traffic or where new work crosses or coincides with an existing road.
  - 1. Place and maintain warning signs according to the project traffic control plan.
  - 2. Obtain approval before dismantling or removing traffic control devices.
- E. For Pedestrians:
  - 1. Place and maintain warning signs under project traffic control plan.
  - 2. Provide pedestrian access in areas where construction interferes with existing pedestrian access.

## **1.10 PROTECTING AND RESTORING PROPERTY AND LANDSCAPE**

- A. Preserve public and private property during the work.
- B. The Engineer verifies reference to the location of monuments and property line markers before they are moved, disturbed, or damaged.
  - 1. Obtain written approval from the Engineer before moving or disturbing any monuments or markers.

- C. Accept liability for any damage to public or private property resulting from defective work, materials, or non-execution of the contract.
  - 1. Maintain liability until the project is accepted.
- D. Restore damaged property to a condition similar or equal to that existing before the damage at no additional cost to the Department.
- E. Temporarily discontinue work if remains of prehistoric dwelling sites or artifacts of historical or archeological significance are encountered. Refer to Section 01355.

#### **1.11 THIRD-PARTY BENEFICIARY CLAUSE**

- A. This contract does not authorize anyone who is not a party to this contract the right to maintain an action for damages under its provisions or to any of the rights of a third-party beneficiary. However, this contract does not prohibit the parties from agreeing to provide third-party beneficiary rights to another party so long as those rights are set forth in a separate agreement and signed by all the parties to this contract and the intended third-party beneficiary.

#### **1.12 PERSONAL LIABILITY OF DEPARTMENT EMPLOYEES**

- A. The Department's authorized representatives act solely as agents and representatives of the Department when carrying out the provisions of or exercising the power or authority granted to them under the contract.
- B. They are not liable either personally or as employees of the Department for actions in their ordinary course of employment.

#### **1.13 NO WAIVER OF LEGAL RIGHTS UPON COMPLETION**

- A. Upon completion of the contract, the Department makes final inspection and notifies the Contractor of acceptance.
  - 1. Final acceptance does not prevent the Department from correcting any measurement, estimate, or certificate made before or after completion of the work.
  - 2. The Department is not prevented from recovering from the Contractor or Surety or both, overpayment sustained for failure of the Contractor to fulfill the obligations under the contract.
  - 3. A waiver from the Department for any breach of any part of the contract is not held as a waiver of any other or subsequent breach.

- B. Even after completion, assume liability to the Department for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards to the Department's rights under any warranty or guaranty without prejudice to the terms of the contract.

#### **1.14 RESPONSIBILITY FOR DAMAGE CLAIMS**

- A. To the extent allowed by law, protect, indemnify, and hold the State of Utah, the Department, and their officers, agents, and employees (State) harmless from and against all claims, demands, damages, and causes of action of every kind or character on account of bodily injuries, death, or damage to property arising out of, resulting from, or in any way connected with, the performance of the contract.
- B. Defend the Department against all third party or other lawsuits arising out of or resulting from the contract Work. The Department may require that the Contractor represent its interests or may choose to have separate counsel. If the Department has its own counsel, the Department pays for its own attorneys' fees, costs, and expenses. Upon determination by the court of the proportionate liability for the claim, total defense costs will be apportioned accordingly. For example, if the court finds the Department to be 60 percent liable for the claim and the Contractor 40 percent liable, then the Department pays 60 percent of the total defense costs while the Contractor pays 40 percent.
- C. If served with a lawsuit or Notice of Claim, Contractor and the Department agree to provide each other with a copy of the summons and complaint within two business days of receipt. Do not file a responsive pleading on behalf of the Department until receiving written notice that the Department chooses to have Contractor handle the defense. The Department will provide the Contractor such written notice in a timely manner allowing the Contractor adequate time to respond to the summons.
- D. If the parties have separate counsel, they agree to cooperate to the fullest extent possible, subject to privileges and ethical rules.
- E. Provide insurance as defined in this Section, article 1.15 from reliable insurance companies authorized to do business in Utah, rated "A" or better and with a financial size category of Class VII or larger by A.M. Best Company, at the time of contract execution.
- F. Comply with the following insurance claims notification and processing procedures:
  - 1. Notify the Engineer of all claims within seven days of notification.
  - 2. Before the final acceptance of the project provide written notification for all pending claims to the Engineer.

3. Notify claimants of denied or partially denied claims of \$5,000 or less of their right to request re-examination by the  
UDOT Claims Re-Examination Board  
4501 South 2700 West  
West Valley City, UT 84114-8430  
Phone: (801) 964-4556
    - a. The information provided to the claimant includes:
      - 1) A time deadline for requesting re-examination equal to seven days after notification of denial or partial denial
      - 2) Address and name of the person to whom it should be directed
      - 3) General information helpful in making a determination
  4. The Board can waive the time deadline.
- G. Cooperate with the UDOT Claims Re-examination Board in resolving disputes regarding denials or partial denials from an insurance carrier.
1. Provide any information possessed by the carrier that the Board believes is pertinent to the determination.
  2. The Board may refer to an insurance carrier's decision and the reason for it.
  3. The determination is based on general applicable standards of insurance adjusting.
  4. The Board does not grant in-person hearings, but relies on documentation prepared by the Contractor, the insurance carrier, the claimant, and the Department.
  5. Neither the insurance carrier nor the Contractor has the right to intervene in a re-examination before the Board.
  6. The board decides the claim as expeditiously as possible.
  7. The decision by the UDOT Claims Re-examinations Board is administratively final.
- H. The Department deducts from the Contractor's pay estimate claims that the Contractor's liability insurance carrier denied but are directed to be paid by the UDOT Claims Re-Examination Board.

## **1.15 INSURANCE REQUIREMENTS**

For projects where the Engineers Estimate is equal to or greater than \$4,000,000 and the ability to select an alternate is provided for in the EBS file, the Contractor may bid one of two insurance alternates. Alternate #2 is not applicable on projects where the Engineers Estimate is less than \$4,000,000.

### **Alternate #1:**

Provide insurance per the requirements listed in this section. Include cost for such insurance in the Contractor's bid prices. When provided for in the EBS file, selection of this alternate is indicated by entering \$1.00 in the unit price field for the Contractor supplied insurance bid item.

- A. Workers' Compensation Insurance
  - 1. Provide Workers' Compensation Insurance to cover full liability. As a minimum, comply with the statutory limits defined by the State of Utah.
- B. General Liability Insurance
  - 1. Provide General Liability insurance with the following minimum limits of liability:
    - a. \$1,000,000 Bodily Injury and Property Damage – Each Accident
    - b. \$2,000,000 General Aggregate
    - c. \$2,000,000 Products and Complete Operations Annual Aggregate
- C. Automobile Liability Insurance
  - 1. Provide Automobile Liability Insurance for claims arising from the ownership, maintenance, or use of motor vehicles involved in project work with the following minimum limits:
    - a. \$1,000,000 Combined single Limit Bodily Injury and Property Damage per Occurrence
- D. Provide the following for all required liability insurance policies:
  - 1. Where and when applicable, name as insured, only in respect to work to be performed under this contract, the State of Utah and all institutions, agencies, departments, authorities, and instrumentalities, and while acting within the scope of their duties, all volunteers as well as members of governing bodies, boards, commissions, and advisory committees.
  - 2. Coverage for the above insured is primary and not contributing.
  - 3. Incorporate into the insurance policy this statement: "Insurance coverage is extended to include claims reported up to one year beyond the date of substantial completion of this contract."



- E. Provide the Department with certificates of insurance showing that they are covered as required above before entering the project site or beginning project work. The certificates will also state that the policies required are endorsed to give the Department (the Engineer) not less than 30 days prior notice in the event of cancellation or change in coverage. Within five days of receiving written notice that the Contractor intends to cancel its insurance or change coverage to the extent that it does not comply with the contract requirements, the Department may object. If Contractor cancels coverage or changes coverage despite that objection, the Department may cancel this contract immediately or sue for an injunction or any other legal remedy to require Contractor to keep its current coverage.
- F. Regardless of the Contractor insurance requirements required in this section, insolvency, bankruptcy, or failure of any insurance company to pay all claims accrued does not relieve Contractor of any obligations.
- G. Endorse all policies to include waivers of subrogation in favor of the Department.
- H. If the Department discovers that the Contractor's policies are not endorsed to the Department, the Engineer gives the Contractor written notice that the certificates need to be modified so as to give the Department the required endorsements.
  - 1. Complete within 10 calendar days.
  - 2. Provide new certificates to the Engineer at that time.
  - 3. If certificates are not obtained, the Department may terminate the Contractor for Default as defined in Section 00555.

#### **Alternate #2**

The Contractor may elect to participate in the UDOT Owner Controlled Insurance Program (OCIP). If the Contractor selects the OCIP Alternate, insurance will be furnished at no cost to the Contractor. However, for bid comparison purposes, Contractors that select the OCIP Alternate must calculate 3 percent of the total bid price and enter that amount into their bid by inserting the 3 percent amount into the unit price field for the OCIP Alternate insurance bid item. Failure to do so will result in the bid being declared non-responsive.

- A. OCIP Alternate: Refer to UDOT Owner Controlled Insurance Program (OCIP) General Conditions for coverage limits and conditions on the UDOT website. Refer to <http://www.udot.utah.gov/main/f?p=100:pg:2229786104579395766:::1:T,V:719>.

### **1.16 SITE OF WORK**

- A. Refer to definition in Section 00570.

## **1.17 HAULING BY TRUCK**

- A. Comply with all Federal and State regulations regarding hauling.
- B. When additional trucks are needed for hauling on site only, on a Federal or State funded project, a subcontract must be in the project office before the additional trucks begin work on the project site. Hauling to the project site or away from the project site does not require a subcontract to be approved by the Engineer.
- C. When using additional trucks to fulfill the DBE goal, a subcontract approved by the UDOT engineer is required.

## **1.18 AIR QUALITY PROTECTION**

- A. Refer to Section 01355.
- B. Contact the Utah Division of Air Quality (DAQ) and obtain the appropriate Air Quality Permit for the project. Permit application forms can be obtained from DAQ's web site. Refer to <http://www.udot.utah.gov/main/f?p=100:pg:2229786104579395766:::1:T,V:719>.  
Utah Division of Air Quality  
150 North 1950 West  
PO Box 144820  
Salt Lake City, UT 84114-4810  
Phone: (801) 536-4000  
Fax: (801) 536-4099
- C. The Contractor is not allowed to proceed with work affecting air quality without an Air Quality Approval Order or Notice of Intent to Approve letter or a Temporary Approval Order for the project, process, or equipment to be used.

**PART 2 PRODUCTS Not used**

**PART 3 EXECUTION Not used**

END OF SECTION